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individually and on behalf of others  
similarly situated

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

DELINA PHIPPS, an individual, and  
on behalf of others similarly situated

Plaintiff,

vs.

BROOKS BROTHERS GROUP, INC.,  
a Delaware limited liability company;  
and DOES 1 through 50, inclusive,

Defendants

No. 2:18-cv-10010 JFW (RAOx)

[Assigned to Hon. John F. Walter;  
Magistrate Judge: Hon. Rozella A.  
Oliver]

Plaintiff's Memorandum Of Points  
And Authorities In Support Of  
Motion For Preliminary Approval Of  
Class Action Settlement

Date: June 1, 2020

Time: 1:30 p.m.

Courtroom: 7A

Judge: Hon. John F. Walter

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**I. Introduction**

Plaintiff Delina Phipps seeks preliminary approval of a proposed wage-and-hour class and representative action settlement on behalf of all persons who worked as non-exempt employees of Brooks Brothers Group, Inc. in California during the period from September 5, 2014 through December 31, 2019. The Stipulation of Class and Representative Action Settlement and Release (“Settlement Agreement”) provides for a non-reversionary settlement in the amount of \$625,000.00 (“Gross Settlement Amount”). Settlement Agreement (“Settlement”) ¶ 19, Exhibit 1 to Matern Decl.

The Settlement was reached after formal and informal discovery and arm’s length, non-collusive bargaining between counsel, including two full-days of private mediation, held several months apart, with experienced mediators. The settlement amount represents a substantial recovery for the Class Members based on the claims alleged and the defenses thereto. Further, the Settlement does not suffer any obvious deficiencies or provide preferential treatment to Plaintiff or any segment of the class. In sum, the proposed Settlement is fair, reasonable and adequate and merits preliminary approval.

Additionally, the proposed notice procedure is appropriate and meets all requirements as to method and form. The Notice will be mailed to Class Members by First Class U.S. Mail at their last known addresses, as updated by the Settlement Administrator. The Notice fairly apprises Class Members of the terms of the proposed Settlement and of their rights and options in connection with the action.

Furthermore, provisional class certification, for settlement purposes only, is appropriate because: (1) the class is so numerous that joinder of all Class Members is impracticable; (2) there are questions of law and fact common to the class; (3) Plaintiff’s claims are typical of the claims of the class; (4) Plaintiff and her counsel will fairly and adequately protect the

1 interests of the Class; and (5) questions of law and fact common to Class  
2 Members predominate over any questions affecting only individual Class  
3 Members, and a class action is superior to other available methods for fairly  
4 and efficiently adjudicating the controversy.

5 Accordingly, Plaintiff moves the Court to enter an order (1) provisionally  
6 certifying the class for settlement purposes only; (2) granting preliminary  
7 approval of the Settlement; (3) authorizing the mailing of the Notice to the  
8 Class Members; (4) enjoining Class Members from initiating or prosecuting  
9 any claim to be released under the Settlement, unless they first submit a  
10 Notice of Objection; and (5) setting a hearing to consider whether to grant  
11 final approval of the Settlement and to consider the requests for attorneys'  
12 fees and costs and an enhancement to Plaintiff.

## 13 **II. Background and Litigation History.**

### 14 **A. The Parties.**

15 Brooks Brothers is a clothing retailer that operated approximately 16 to  
16 20 stores in California during the class period (September 5, 2014 through  
17 December 31, 2019).

18 Plaintiff worked for Brooks Brothers as an inventory coordinator at the at  
19 the Company's warehouse in Culver City for approximately 9 years, then  
20 worked at a premium retail store location on Rodeo Drive for approximately  
21 6 years until the location was closed in 2018.

### 22 **B. Procedural History.**

23 On September 5, 2018, Plaintiff filed this putative class and  
24 representative action against defendant Brooks Brothers Group, Inc. in the  
25 Superior Court of the State of California for the County of Los Angeles,  
26 alleging causes of action for (1) Failure to Provide Required Meal Periods; (2)  
27 Failure to Provide Required Rest Periods; (3) Failure to Pay Overtime  
28 Wages; (4) Failure to Pay Minimum Wages; (5) Failure to Pay All Wages Due



1 to Discharged and Quitting Employees; (6) Failure to Maintain Required  
2 Records; (7) Failure to Furnish Accurate Itemized Wage Statements; (8)  
3 Failure to Indemnify Employees for Necessary Expenditures Incurred in  
4 Discharge of Duties; (9) Unfair and Unlawful Business Practices; and, (10)  
5 Penalties under the Labor Code Private Attorneys General Act (“PAGA”).  
6 Dkt. 1-1. On November 29, 2018, Defendant removed the action to this Court  
7 under the Class Action Fairness Act. Matern Decl. at ¶ 4.

### 8 **C. Discovery and Investigation.**

9 Prior to filing the complaint, counsel for Plaintiff investigated the  
10 potential claims including by interviewing plaintiff, reviewing documents  
11 provided by plaintiff as well as publicly-available documents, and researched  
12 and analyzed potential claims under the applicable California Labor Code  
13 sections and the Industrial Welfare Commission Wage Order 7 (Tit. 8 Cal.  
14 Code Regs. 11070). Matern Decl. ¶ 5.

15 Following the filing of the complaint and removal to this Court, the  
16 parties made their Rule 26 initial disclosures and commenced formal  
17 discovery. Matern Decl. ¶ 6. Plaintiff propounded written discovery,  
18 including interrogatories, requests for admission, and requests for  
19 production of documents. Matern Decl. ¶ 6. Defendant propounded  
20 interrogatories and requests for production. Matern Decl. ¶ 6. Each party  
21 noticed the deposition of the other. Matern Decl. ¶ 6.

22 In the meantime, the parties agreed to mediation to be held on April 25,  
23 2019 before Tripper Ortman, Esq., a respected mediator with a particular  
24 emphasis in employment cases. Matern Decl. ¶ 7. At that time, the parties  
25 agreed to put over the pending formal discovery in favor of informal  
26 discovery focused on preparation for the mediation. Matern Decl. ¶ 7.  
27 Defendant produced dozens of declarations of employees as well as policy  
28 documents, Plaintiff’s records, and time and payroll records for

1 approximately 730 out of the then-estimated 971 of Defendant's California  
2 employees. Matern Decl. ¶ 7. Those time and payroll records contained  
3 hundreds of thousands of data points. Matern Decl. ¶ 7. Plaintiff retained a  
4 statistical analyst to analyze the timekeeping and payroll records, which  
5 assisted Plaintiff's counsel in preparing a damages model prior to  
6 mediation. Matern Decl. ¶ 7.

7 The mediation went forward on April 25, 2019 with Plaintiff and a  
8 representative for Defendant attending. Matern Decl. ¶ 8. The mediation  
9 lasted all day and while the parties made progress in understanding each  
10 other's positions, they were unable to come to terms. Matern Decl. ¶ 8.

11 Following the mediation, Brooks Brothers retained new defense counsel,  
12 and there were further discussions between the parties' counsel regarding  
13 the case and the potential framework for further settlement discussions.  
14 Matern Decl. ¶ 9. In conjunction with these discussions, Brooks Brothers  
15 produced substantially more documents, primarily hundreds of paper time  
16 records from its California stores. Matern Decl. ¶ 9. Defendant maintained  
17 that during the class period, its California stores used different means of  
18 recording time including paper time sheets, the POS system, the WorkForce  
19 system, and handwritten and electronic meal break waiver forms. Matern  
20 Decl. ¶ 9. While the electronic data could be readily analyzed by computer,  
21 the paper time sheets were not machine-readable and Plaintiff had the data  
22 input manually from the paper records at significant expense. Matern Decl.  
23 ¶ 9. The data from the paper records resulted in over 20,000 rows of time  
24 data for stores throughout California. Matern Decl. ¶ 9.

25 Counsel for the parties continued settlement discussions and agreed to a  
26 second mediation before the Hon. Louis Meisinger (ret.) to be held on  
27 November 5, 2019. Matern Decl. ¶ 10. At that time, the deadline for Plaintiff  
28 to file her motion for class certification was December 2, 2019, so while the

1 parties continued to engage in informal discovery to prepare for mediation,  
2 there was no guarantee that mediation efforts would succeed and so they  
3 also prepared for class certification. Matern Decl. ¶ 10. Thus, Plaintiff took a  
4 Fed. Rule Civ. Pro. 30(b)(6) deposition on October 29, 2019 and Plaintiff sat  
5 for her deposition on November 1, 2019. Matern Decl. ¶ 10.

6 The second mediation session went forward on November 5, 2019.  
7 Matern Decl. ¶ 11. Again, after a full-day, the parties were unable to reach a  
8 settlement and the session ended with a mediator's proposal. Matern Decl. ¶  
9 11. After these extensive negotiations, the parties accepted the proposal and  
10 proceeded to prepare the long-form settlement agreement. Matern Decl. ¶  
11 11. The settlement is documented in the Stipulation of Settlement  
12 ("Settlement Agreement"), which is submitted herewith as Exhibit 1 to the  
13 Matern Declaration. Matern Decl. ¶ 11.

14 The Settlement Agreement takes into consideration the disputed  
15 potential liability, the wide range of potential recovery, and the  
16 uncertainties and expense of protracted litigation. Matern Decl. ¶ 12. The  
17 proposed notice to class members is attached to the Settlement Agreement  
18 as Exhibit A. Matern Decl. ¶ 12; Notice, Exhibit A to Settlement Agreement.  
19 The Parties believe, and the mediator's proposal would also suggest, that it  
20 is in the best interests of all Parties and the putative settlement class and  
21 representative group, to resolve the actions on these terms. Matern Decl. ¶  
22 12.

23 The settlement compensates class members for all claims alleged against  
24 Brooks Brothers in the Complaint, including claims that Brooks Brothers  
25 failed to provide meal periods and rest breaks and for associated penalty  
26 claims, such as wage statement penalties, waiting time penalties, and civil  
27 penalties under the Private Attorneys General Act, California Labor Code  
28 section 2699 et seq. ("PAGA"). Matern Decl. ¶ 13. The \$625,000, non-

1 reversionary settlement is the result of two arm's length mediations held  
2 months apart, and reflects the parties' well-informed understanding of the  
3 strengths and weakness of Plaintiff's claims and Brooks Brothers' defenses.  
4 Matern Decl. ¶ 13. The Settlement provides substantial benefits to Class  
5 Members and avoids the cost, risk, and delay attendant to further litigation,  
6 which could take years and is uncertain to result in a class-wide recovery.  
7 Matern Decl. ¶ 13. Accordingly, the Court should certify the proposed  
8 settlement class and grant preliminary approval of the settlement.

### 9 **III. KEY SETTLEMENT TERMS**

10 \$625,000 Non-Reversionary Settlement Fund. The settlement provides  
11 for a \$625,000 payment to provide for class member settlement payments,  
12 attorneys' fees and costs, a \$18,750 payment to the Labor & Workforce  
13 Development Agency ("LWDA") for the State's share of penalties under the  
14 Labor Code Private Attorneys General Act ("PAGA"), Labor Code §§ 2698 et  
15 seq., Brooks Brothers' share of applicable payroll taxes on amounts treated as  
16 wages, an incentive award of \$10,000 to Class Representative Phipps, and  
17 \$15,000 for the costs of settlement administration. Settlement ¶¶ 21, 23, 33,  
18 48-52. The \$625,000 settlement fund is entirely non-reversionary. Settlement  
19 ¶ 51.

20 Distribution of Settlement Payments. The Net Settlement Amount  
21 available for class member settlement payments is estimated to be  
22 approximately \$345,000 for a class of 1,007, providing for an average  
23 individual settlement payment of approximately \$342.60 per class member.  
24 Matern Decl. at ¶ 14. The individual settlement payment will be calculated as  
25 a pro rata share of the Net Settlement Amount, based on the number of  
26 workweeks worked by each Class Member during the Class Period.  
27 Specifically, each participating Class Member's Individual Settlement Share,  
28 less employee's and employer's withholdings and taxes associated with the

1 wage portion of the Individual Settlement Share, will be based on the number  
2 of Qualifying Workweeks as a non-exempt employee between September 5,  
3 2014 to December 31, 2019, subject to the provision that any Class Member  
4 who was a member of the settlement class in *Hoagland, et al. v. Brooks*  
5 *Brothers Group, Inc., et al.*, Los Angeles County Superior Court, Case No.  
6 BC511534, shall be credited only for the number of Qualifying Workweeks he  
7 or she was employed by Brooks Brothers as a Class Member from January 30,  
8 2015 to December 31, 2019.<sup>1</sup> Settlement ¶ 29, 60. One-third of each  
9 Individual Settlement Share shall be allocated as wages, one-third of each  
10 Individual Settlement Share shall be allocated as penalties, and one-third of  
11 each Individual Settlement Share shall be allocated as interest. Individual  
12 Settlement Shares will be paid out to Participating Class Members subject to  
13 reduction for all employer's and employee's share of withholdings and taxes  
14 associated with the wage-portion of the Individual Settlement Shares.  
15 Settlement ¶ 61.

16 Each class member who does not opt out of the settlement and who can be  
17 located in the Notice process will automatically be mailed a settlement  
18 payment. Settlement ¶ 55(c). Class members will not be required to submit a  
19 claim or fill out a form to receive a settlement payment. Settlement ¶ 60(a).  
20 The settlement provides for skip tracing to locate class members whose  
21 Notices are returned to the Administrator as undeliverable. Settlement ¶  
22 54(c). There shall be a 180-day check cashing period for the settlement  
23 payments. Settlement ¶ 64. Class members whose Notices are returned as  
24 undeliverable, and for whom a more current address cannot be ascertained  
25 through skip tracing, will be sent a settlement check at the last known address  
26 and if the check is not negotiated within 180 days, the check will be cancelled

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27 <sup>1</sup> The settlement class period in *Hoagland* was from June 7, 2009 through  
28 January 30, 2015. Matern Decl. at ¶ 14.

1 and the funds sent to the State Controller's Office. Settlement ¶ 64.

2       Releases. The class member release is coextensive with those claims  
3 that were or could have been brought in the Complaint, based on the facts  
4 and allegations in the complaint on file. Settlement ¶ 67(a). These include  
5 claims for minimum and overtime wages, pay for all hours worked including  
6 off-the-clock work, commissions and/or incentive pay, vacation pay, rest  
7 periods, meal periods, expense reimbursement, failure to timely pay wages,  
8 failure to furnish accurate, itemized wage statements, failure to maintain  
9 required records, failure to pay all wages due to discharged and quitting  
10 employees, unfair and unlawful business practices, and civil penalties under  
11 the PAGA. Settlement ¶ 67. Class members' claims will be released from  
12 September 5, 2014 through December 31, 2019. Settlement ¶ 67(b).

13       Attorneys' Fees and Costs. The Settlement provides that Class Counsel  
14 may seek an amount not to exceed Two Hundred Six Thousand Two Hundred  
15 Fifty Dollars (\$206,250.00) (33% of the Gross Settlement Amount) of the  
16 \$625,000 Gross Settlement Amount for attorneys' fees, and Class Counsel  
17 Expenses not to exceed Thirty Thousand Dollars (\$30,000.00). Settlement ¶  
18 7-8, 51.

19       Enhancement Award to Class Representative Phipps. The Settlement  
20 provides for an incentive award of \$10,000 to Class Representative Delina  
21 Phipps, in recognition of her efforts on behalf of the Class. Settlement ¶ 50. If  
22 approved by the Court, she would receive these amounts in addition to her  
23 individual settlement payment. *Id.*

24       Settlement Administrative Costs. The parties have agreed to use CPT  
25 Group, Inc. as the settlement administrator. Settlement ¶ 32. Settlement  
26 administration costs are estimated at \$15,000.00. Settlement ¶ 33.

27  
28



**A. The requirements of Rule 23(a) are satisfied.**

Plaintiff seeks certification, for settlement purposes, of a class defined as, “all current and former non-exempt employees, employed by Defendant in the State of California, at any time from September 5, 2014 through December 31, 2019.” Settlement ¶ 10.

**1. Rule 23(a)(1): Numerosity.**

The settlement class, consisting of at least 1,007 people easily satisfies the numerosity standard, which requires merely that the class be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). Matern Decl. ¶ 15.

**2. Rule 23(a)(1): Commonality.**

The case involves numerous questions of law and fact that are common to the class, satisfying the requirements of Rule 23(a)(2). The claims being settled turn on common questions, such as: (1) whether class members are entitled to premium pay wages for missed meal periods; (2) whether class members are entitled to premium pay wages for missed rest periods; (3) whether class members are entitled to overtime compensation for their overtime hours worked; (4) whether Defendant failed to pay class members minimum wages for all hours worked; (5) whether Defendant failed to pay all wages due to discharged and quitting employees; (6) whether Defendant failed to maintain required records; (7) whether Defendant failed to furnish accurate itemized wage statements; (8) whether Defendant failed to indemnify class members’ for necessary expenditures incurred in discharge of duties; (9) whether Defendant engaged in unfair and unlawful business practices; and (10) whether representative group members are entitled to penalties under the PAGA.

**3. Rule 23(a)(3): Typicality.**

Class Representative Phipps has claims that are typical of the class. The

1 typicality standard is satisfied when “the representative’s claims are  
2 reasonably co-extensive with those of absent class members; they need not be  
3 substantially identical.” *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir.  
4 2010). Ms. Phipps was employed by Brooks Brothers in a non-exempt  
5 position and was allegedly subject to the same policies that are challenged in  
6 the Complaint. Phipps Decl. ¶ 5 and Exhibit 2 (wage statement).

7 **4. Rule 23(a)(4): Adequacy of Representation.**

8 The adequacy of representation requirement is met where the class  
9 representative: (1) has common, not antagonistic, interests with unnamed  
10 class members; and (2) will vigorously prosecute the interests of the class  
11 through qualified counsel. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591,  
12 625-26 (1997). Class Representative Phipps has no conflict of interest with  
13 the Class and has retained qualified counsel – Matern Law Group, PC.  
14 Matern Decl. ¶¶ 29-40; Phipps Decl. ¶ 7. Accordingly, Fed.R.Civ.P. 23 (a)(4)’s  
15 adequacy requirement is satisfied.

16 **B. The predominance and superiority requirements of**  
17 **Rule 23(b)(3) are satisfied.**

18 The predominance inquiry “tests whether proposed classes are sufficiently  
19 cohesive to warrant adjudication by representation,” and focuses on the  
20 “relationship between the common and individual issues.” *Hanlon*, 150 F.3d  
21 at 1022 (quotation marks and citation omitted). “When common questions  
22 present a significant aspect of the case and they can be resolved for all  
23 members of the class in a single adjudication, there is clear justification for  
24 handling the dispute on a representative rather than on an individual basis.”  
25 *Id.* (quotation marks and citation omitted). “[T]he existence of certain  
26 individualized or deviating facts will not preclude certification if most class  
27 members were subjected to a company policy in a way that gives rise to  
28 consistent liability or lack thereof.” *Kamar v. Radio Shack Corp.*, 254 F.R.D.



1 387, 399 (C.D. Cal. 2008).

2 The resolution of this case would turn primarily on common issues,  
3 which predominate in this action, and include (1) whether class members are  
4 entitled to premium pay wages for missed meal periods; (2) whether class  
5 members are entitled to premium pay wages for missed rest periods; (3)  
6 whether class members are entitled to overtime compensation for their  
7 overtime hours worked; (4) whether Defendant failed to pay class members  
8 minimum wages for all hours worked; (5) whether Defendant failed to pay all  
9 wages due to discharged and quitting employees; (6) whether Defendant  
10 failed to maintain required records; (7) whether Defendant failed to furnish  
11 accurate itemized wage statements; (8) whether Defendant failed to  
12 indemnify class members' for necessary expenditures incurred in discharge  
13 of duties; (9) whether Defendant engaged in unfair and unlawful business  
14 practices; and (10) whether representative group members are entitled to  
15 penalties under the PAGA. Accordingly, common questions of law and fact  
16 predominate over individualized issues.

17 In light of the parties' settlement agreement, the court need not consider  
18 any trial manageability issues that might otherwise have borne on the  
19 propriety of class certification. *See, e.g., Amchem*, 521 U.S. at 620; *AIG*, 689  
20 F.3d at 240 (settlement class could be certified even where district court had  
21 denied class certification for litigation, because manageability was no longer  
22 at issue).

23 Class resolution of these claims would be "more efficient and fairer than  
24 individual lawsuits." *Ambriz v. Coca-Cola Co.*, No. CV 14-00715 SVW, 2015  
25 WL 12683823 at \*4 (C.D. Cal. March 11, 2015). Trying these claims  
26 individually in hundreds or thousands of cases would require substantial  
27 repetition of evidence and could result in conflicting judgments while  
28 imposing an extraordinary burden on the parties' and the Court's resources.

Moreover, each class member's claim is likely to be modest, and therefore it would not be economically feasible for most class members to litigate their claims independently. Therefore, absent class treatment, most class members' claims would go unremedied regardless of their merit.

**V. THE SETTLEMENT MERITS PRELIMINARY APPROVAL.**

**A. General principles.**

At the preliminary approval stage, the court must find only that the proposed settlement is non-collusive and within the range of possible final approval. *In re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078, 1079-80 (N.D. Cal. 2007); see also Alba Conte & Herbert B. Newberg, 4 *Newberg on Class Actions*, § 13.13 (5th ed., 2014). As long as "preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval," the Court should preliminarily approve the settlement. *In re Vitamins Antitrust Litig.*, 2001 WL 856292, at \*4 (D.D.C. July 25, 2001) (quoting *Manual for Complex Litigation*, Third § 30.41 at p. 237 (Federal Judicial Center 1995)). A full fairness analysis follows at the final approval stage, after class members have an opportunity to be heard regarding the settlement. *Ambriz*, 2015 WL 12683823 at \*5 n.3.

**B. The Settlement Is the Product of Arm's Length, Non-Collusive Negotiations, Has No Obvious Deficiencies, and Warrants Approval.**

The proposed settlement meets all of the standards for preliminary approval.

**1. The settlement is non-collusive.**

The settlement is the product of a mediation session with the

1 assistance two mediators, including the highly respected former jurist Hon.  
2 Louis Meisinger. Matern Decl. ¶ 16. The settlement was reached only after  
3 sufficient discovery that Counsel for Plaintiff and the proposed Class were  
4 fully aware of the strengths and weaknesses of the case. Matern Decl. ¶ 16.

5 **2. The settlement contains no “obvious deficiencies.”**

6 The settlement contains none of the provisions that courts sometimes  
7 identify as cause for concern. The settlement is entirely non-reversionary.

8 **a The settlement provides substantial monetary**  
9 **relief to the class.**

10 The settlement provides substantial monetary relief for class members.  
11 Plaintiff estimated the unpaid premium wages arising from meal period  
12 violations at \$131,364.20 (8,410 violations x \$15.62 average wage rate).  
13 Unpaid premium wages for the rest break violations were estimated at  
14 \$34,645.16 (2,218 violations x \$15.62 average wage rate). Matern Decl. ¶ 16.  
15 Assuming at least one violation under PAGA for 400 employees over 2,000  
16 pay periods over a one-year PAGA period, potential PAGA penalties would be  
17 \$360,000 ((\$100 initial penalty x 400 employees) + (\$200 subsequent  
18 penalty x (2,000 pay periods – 400 employees)). Matern Decl. ¶ 16. With an  
19 estimated 200 former employees, the Labor Code section 203 penalties  
20 would be \$702,900 (200 former employees x \$15.62 average wage rate x 7.5  
21 hour workday x 30 days). Matern Decl. ¶ 16. Together, these unpaid wages  
22 and penalties amount to \$1,228,909.36. Matern Decl. ¶ 16. The Gross  
23 Settlement Amount of \$625,000 is approximately 51% of that amount.  
24 Matern Decl. ¶ 16. While this does not include interest, penalties under Labor  
25 Code section 226, the estimated 400 hours of unpaid time due to rounding,  
26 or cell phone reimbursement, the settlement clearly represents a substantial  
27 recovery. Matern Decl. ¶ 16. Moreover, the estimated “soaking wet” recovery  
28 numbers above do not account for meal period waivers asserted by Brooks

1 Brothers, the \$7,497.60 in premium payments that Brooks Brothers made  
2 for meal period violations, or any of the other defenses. Matern Decl. ¶ 16.

3 Given that Brooks Brothers contested Plaintiff's claims and contends  
4 that it has calculated overtime properly, this is an outstanding result.

5 **b. The plan of distribution of settlement**  
6 **payments to class members treats all class**  
7 **members equally and is fair and reasonable.**

8 The settlement provides for a pro rata distribution of the Net Settlement  
9 Fund based on each class member's number of Qualifying Workweeks  
10 worked during the class period, less those which were covered by the prior  
11 *Hoagland* settlement. In addition, class members will not have to make  
12 claims to receive a settlement payment. Each class member will be mailed a  
13 payment automatically. To protect the interests of all class members, the  
14 settlement incorporates procedures to ensure that as many class members as  
15 possible can be located.

16 **c. The release is coextensive with the operative**  
17 **complaint.**

18 The release given by class members in the settlement is fair and  
19 reasonable, because it is limited to those claims that were or could have been  
20 alleged in the operative Complaint, arising out of the facts alleged in the  
21 Complaint. Settlement Agreement ¶ 67; Dkt. 6-1 (Exhibit A).

22 **d. Class Representative Phipps will not receive**  
23 **disproportionate payment to those of class**  
24 **members, and the proposed incentive award**  
25 **is fair and reasonable.**

26 Class Representative Phipps will receive a settlement share calculated by  
27 the same method as the shares of the other Class Members. Class  
28 Representative Phipps will also be eligible to receive a service award in

1 addition to her individual settlement payments, but the settlement is not  
2 contingent on Court approval of that service award. Settlement ¶ 12, 50;  
3 Matern Decl. 20. Any amount that is not approved by the Court will be added  
4 to the Net Fund Value for class member settlement payments. Settlement ¶  
5 50. Ms. Phipps will sign a general release of all claims. Settlement ¶¶ 50, 68.

6 The proposed \$10,000 incentive award to Class Representative Phipps is  
7 within the range that courts in this circuit routinely approve. See, e.g.,  
8 *Hightower v. JP Morgan Chase Bank, NA*, No. CV 11-1802 PSG, 2015 WL  
9 9664959 at \*12 (C.D. Cal. Aug. 4, 2015) (approving \$10,000 incentive  
10 awards to each of seven lead plaintiffs); *LaFleur v. Med. Mgmt. Int'l, Inc.*,  
11 No. CV 13-00398-VAP (OPx), 2014 WL 2967475 at \*8 (C.D. Cal. June 25,  
12 2014) (approving incentive awards of \$15,000 each to two class  
13 representatives from \$535,000 wage and hour class action settlement).  
14 Plaintiff will provide declarations in support of final approval detailing the  
15 active participation of Class Representative Phipps, and the services she  
16 provided to the Class.

17 **e. The settlement's provisions for attorneys'**  
18 **fees and costs are in the range approved.**

19 The attorneys' fees and costs provisions of the settlement are fair and  
20 reasonable. The settlement permits Class Counsel to seek attorneys' fees not  
21 to exceed \$206,250.00, i.e., one-third of the Gross Settlement Amount of  
22 \$625,000.00. Settlement ¶ 51. A fee award of one-third of the common fund  
23 is consistent with fee awards made by federal courts in the Ninth Circuit. See,  
24 e.g., *In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 378-79 (9th Cir. 1995)  
25 (affirming fee award of one-third of settlement); *Singer v. Becton Dickinson*  
26 *& Co.*, No. 08-821 IEG, 2010 WL 2196104 at \*8-9 (S.D. Cal. Jun. 1, 2010)  
27 (33.33% of wage and hour settlement "falls within the typical range ... in  
28 similar cases"; citing awards of 33.33%-40%); *Lopez v. Delta Air Lines, Inc.*,

1 Case No. 2:15-cv-07302-SVW-SS (awarding one third of settlement fund in  
2 case involving improper calculation of overtime) (Order Granting Plaintiffs’  
3 Motion for Attorneys’ Fees, Costs, and Class Representative Service Award  
4 Payments, November 15, 2017) (Wilson, J.); *Stuart v. Radioshack Corp.*, C-  
5 07-4499 EMC, 2010 WL 3155645, at \*6 (N.D. Cal. Aug. 9, 2010) (awarding  
6 one-third of settlement fund in wage-and-hour class action and noting that  
7 “[t]his is well within the range of percentages which courts have upheld as  
8 reasonable in other class action lawsuits”).

9 Class Counsel will also have the opportunity to seek reimbursement of  
10 their litigation expenses not to exceed \$30,000.00. Matern Decl. ¶ 21. As will  
11 be set forth in detail in Class Counsel’s fee motion, the costs for which Class  
12 Counsel will seek reimbursement are of the type routinely reimbursed as  
13 necessary litigation expenses, such as deposition transcripts, expert fees, and  
14 mediation fees, and the actual amount of costs incurred actually exceeds  
15 what is requested. The Settlement is not contingent on the Court granting the  
16 attorneys’ fees and costs requested. Settlement ¶ 51; Matern Decl. ¶ 21. As  
17 with the Class Representative enhancement, any amounts not awarded by  
18 the Court will be added to the Net Fund Value that is available for class  
19 member settlement payments. Settlement ¶ 51.

20 **f. The allocation of \$18,750 to the State’s share**  
21 **of PAGA penalties effectuates PAGA’s**  
22 **purposes in the context of the entire**  
23 **settlement.**

24 The \$25,000 PAGA Payment (\$18,750 payment to the LWDA for the  
25 State’s share of PAGA penalties and \$6,250 payment to be distributed to  
26 Participating Class Members) is consistent with recent authority regarding  
27 the allocation of settlement proceeds to PAGA in large wage and hour class  
28 actions. Matern Decl. ¶ 21. Under PAGA, 75% of the recoverable civil



1 penalties are paid to the LWDA for enforcement of California's labor laws,  
2 and the remaining 25% is distributed to aggrieved employees. Labor Code  
3 §2699(i). The \$18,750 payment to the LWDA for the State's share of PAGA  
4 penalties therefore represents an allocation of three percent to PAGA  
5 penalties from the Gross Settlement Amount. In a combined class action and  
6 PAGA settlement of wage and hour claims, "the Court must evaluate the  
7 adequacy of compensation to the class as well as the adequacy of the  
8 settlement in view of the purposes and policies of PAGA. In doing so, the  
9 court may apply a sliding scale. For example, if the settlement for the Rule 23  
10 class is robust, the purposes of PAGA may be concurrently fulfilled. By  
11 providing fair compensation to the class members as employees and  
12 substantial monetary relief, a settlement not only vindicates the rights of the  
13 class members as employees, but may have a deterrent effect upon the  
14 defendant employer and other employers, an objective of PAGA." *O'Connor*  
15 *v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1134 (N.D. Cal. 2016).  
16 Applying the sliding scale analysis, courts have held that comparable  
17 allocations to PAGA penalties in a class action settlement fulfill the purposes  
18 of PAGA and warrant approval. *See, e.g., Syed v. M-I, LLC*, No. 1:12-cv-  
19 01718-DAD, 2017 WL 714367 at \*13 (E.D. Cal. Feb. 22, 2017) (granting  
20 preliminary approval of allocation of \$100,000 to PAGA penalties from gross  
21 settlement of \$3.95 million settlement of California wage and hour claims);  
22 *Viceral v. Mistras Group, Inc.*, 18 No. 15-cv-02198-EMC, 2016 WL 5907869  
23 at \*8-\*9 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval of allocation  
24 of \$20,000 to PAGA penalties from \$6 million settlement based on overall  
25 quality of settlement balanced against litigation risks).

26 Here, the settlement as a whole provides substantial individual recoveries  
27 to class members on their Labor Code claims. Matern Decl. ¶ 17. PAGA's  
28 goals of enforcing the Labor Code through private litigation are also well

1 effectuated by this settlement. The additional allocation of \$18,750 to the  
2 State's share of PAGA penalties further supports the State's efforts to enforce  
3 California labor law.

4 **g. The overwhelming bulk of the settlement fund will**  
5 **be distributed to class members and the State for**  
6 **PAGA penalties, and nothing will revert to**  
7 **Defendant.**

8 The vast bulk of the \$625,000 Gross Settlement Amount will be  
9 distributed to class members. The settlement is entirely non-reversionary.  
10 The entire net settlement amount after the deduction of the \$18,750 payment  
11 to the LWDA for the State's share of PAGA penalties, attorneys' fees and  
12 costs, class representative enhancement payment, and administrative fees  
13 will be distributed as settlement payments to class members.

14 **C. The Settlement Is Well Within the Range of Possible**  
15 **Approval.**

16 At the preliminary approval stage, courts often tentatively assess the  
17 factors that will go into a final fairness determination: (1) the strength of the  
18 plaintiff's case; (2) the risk, expense, complexity, and likely duration of further  
19 litigation; (3) the amount of the settlement; (4) the extent of discovery  
20 completed and the stage of the proceedings; and (5) the experience and views  
21 of counsel. *See, e.g., Ambriz*, 2015 WL 12683823 at \*5; *Moshogiannis v.*  
22 *Security Consultants Grp., Inc.*, No. 10-05971, 2012 WL 423860 at \*5 (N.D.  
23 Cal. Feb. 8, 2012); *Gardner v. GC Servs., LP*, No. 10-0997, 2011 WL 5244378  
24 at \*6 (S.D. Cal. Nov. 1, 2011). All of these factors indicate that the settlement  
25 is well within the range of reasonableness, and the Court should direct notice  
26 to be issued to class members.  
27  
28



1                   **1. The Strength of Plaintiff's Case on the Merits as**  
2                   **Balanced Against the Risk, Expense, and Likely**  
3                   **Duration of Further Litigation.**

4           The overall benefits of the proposed settlement greatly outweigh the  
5           potential risks, expense, and likely duration of further litigation. While  
6           Plaintiffs are convinced their claims are strong on the merits, they recognize  
7           the substantial risks involved in litigating this case. Brooks Brothers  
8           contends that its meal and rest period policies and practices were legally  
9           complaint, that it properly paid class members for all hours worked and  
10          timely, issued accurate, itemized wage statements, maintained accurate  
11          records, reimbursed business expenses, and paid all wages due to separated  
12          employees upon termination and was prepared to defend the case vigorously.  
13          A class-wide recovery would be highly uncertain.

14          Also, the delay and expense that would be incurred if the case is litigated  
15          rather than settled would be substantial. Brooks Brothers would be expected  
16          to aggressively litigate virtually every issue in this case, and can be expected  
17          to continue to do so if the case is not settled. The proposed settlement, by  
18          contrast, provides a substantial and immediate benefit to the class which is  
19          “preferable to lengthy and expensive litigation with uncertain results.” *Nat’l*  
20          *Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal.  
21          2004) (citation omitted).

22                   **2. The Overall Recovery Is Substantial.**

23          As set forth in Section V.B.2.a, *supra*, the gross settlement amount of  
24          \$625,000 is a substantial amount both as an absolute number and for the  
25          expected class size of 1,007 employees. Individual class members are  
26          estimated to recover, on average, approximately \$342.60 each. Matern Decl.  
27          ¶ 14.

28

1                   **3. The Extent of Discovery and the Stage of the**  
2                   **Proceedings.**

3           The extent of discovery and investigation and the stage of the litigation  
4           also support the settlement. Plaintiff completed deposition of the corporate  
5           employee designated by Brooks Brothers pursuant to Fed.R.Civ.P. 30(b)(6)  
6           on various topics. Brooks Brothers deposed Ms. Phipps. Plaintiff's counsel  
7           also propounded comprehensive Requests for Production of Documents and  
8           Interrogatories, which led to informal discovery for the mediations.  
9           Plaintiff's Counsel analyzed the documents and data Brooks Brothers  
10          produced and hired an expert to analyze the time and payroll records.

11          By the time a settlement was reached, the parties were well aware of the  
12          risks and benefits associated with settlement or further litigation, and the  
13          range of possible outcomes. This factor weighs strongly in favor of  
14          settlement.

15                   **4. Highly Experienced Class Counsel Support the**  
16                   **Settlement.**

17          Class Counsel are very experienced in class litigation, particularly in wage  
18          and hour and other employment cases. Matern Decl. ¶¶ 33-37. Class  
19          Counsel's endorsement of the settlement as fair, reasonable, and adequate in  
20          light of the risks of further litigation and recommendation that it be  
21          approved (see Matern Decl. ¶ 28) "is entitled to significant weight, and  
22          weighs in favor of settlement." *Morales v. Stevco, Inc.*, No. No. 1:09-cv-  
23          00704 AWI JLT, 2011 WL 5511767 at \*11 (E.D. Cal. Nov. 10, 2011); see, e.g.,  
24          Ambriz, 2015 WL 12683823 at \*6.

25                   **VI. THE PROPOSED NOTICE SHOULD BE APPROVED.**

26          Federal Rule of Civil Procedure 23(c)(2)(B) requires that absent class  
27          members receive the "best notice that is practicable under the  
28          circumstances." For a Rule 23(b)(3) class, the notice must clearly and

1 concisely state: (i) the nature of the action; (ii) the definition of the class  
2 certified; (iii) the class claims, issues, or defenses; (iv) that a class member  
3 may enter an appearance through an attorney if the member so desires; (v)  
4 that the court will exclude from the class any member who requests  
5 exclusion; (vi) the time and manner for requesting exclusion; and (vii) the  
6 binding effect of a class judgment on members under Rule 23(c)(3). Fed. R.  
7 Civ. P. 23(c)(2)(B). “Notice is satisfactory if it generally describes the terms  
8 of the settlement in sufficient detail to alert those with adverse viewpoints to  
9 investigate and to come forward and be heard.” *Churchill Vill., LLC v. Gen.*  
10 *Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (internal quotations marks and  
11 citations omitted). Such notice is reasonable if mailed to each member of a  
12 settlement class “who can be identified through reasonable effort.” *Eisen v.*  
13 *Carlisle & Jacquelin*, 417 U.S. 156, 176 (1974).

14 The proposed Notice meets all of the requirements of a notice to Rule  
15 23(b)(3) class members. The Notice explains in plain and easily understood  
16 language what the case is about; the class definition and claims; the  
17 settlement amount and approximate individual amount each Class Member  
18 will receive; the requested amounts to be paid to Class Counsel and as  
19 incentive awards to the Class Representatives; the rights of Class Members to  
20 appear through attorneys; the rights of Class Members to opt-out or object to  
21 the Settlement’s terms and the process by which they can do so; the binding  
22 effect of the Settlement on those who do not request exclusion, including a  
23 description of the Claims being released; and the particulars of the final  
24 fairness hearing. Class Members will have 45 days to decide whether to opt  
25 out or object to the settlement. *See* Settlement, Exh. A (Class Notice).

26 The parties’ proposed plan for directing notice to the Class set forth in the  
27 Settlement is also “the best notice that is practicable under the  
28 circumstances.” Using last-known addresses provided by Defendant, the

1 Settlement Administrator will send the Notice by First Class U.S. Mail to all  
2 Class Members. Settlement ¶ 54(b). Further, the Settlement Administrator  
3 will perform skip traces to obtain the correct address of any Class Members  
4 for whom the Notice is returned as undeliverable, and shall attempt re-  
5 mailings where new addresses are ascertained. Settlement ¶ 54(c). Plaintiffs  
6 are not aware of any additional method of distribution that would be  
7 reasonably likely to result in the receipt of notice by Class Members who  
8 might otherwise not receive notice pursuant to the proposed distribution  
9 plan. For these reasons, the Settlement's plan for directing notice to class  
10 members satisfies Rule 23(c)(2)(B). *See, e.g., Wright v. Linkus Enter., Inc.*,  
11 259 F.R.D. 468, 475 (E.D. Cal. 2009); *Misra v. Decision One Mortg. Co.*, No.  
12 07-0994 DOC, 2009 WL 4581276, \*9 (C.D. Cal. Apr. 13, 2009).

## 13 **VII. SCHEDULE FOR FINAL APPROVAL.**

14 Because the case meets the requirements for certification of a settlement  
15 class and the Settlement meets the requirements for preliminary approval,  
16 the Court should direct notice to issue and set a final fairness hearing to  
17 decide whether to grant final approval to the Settlement, as well as whether  
18 to grant the Class Representatives' application for an award of service  
19 payments and Class Counsel's motion for attorney's fees and costs. *See Fed.*  
20 *R. Civ. P. 23(e)(2).*

21 Plaintiff requests that the Court set the Fairness Hearing for no less than  
22 105 days after preliminary approval (on September 14, 2020 or later), or the  
23 earliest available date thereafter. As reflected in the proposed order  
24 submitted herewith, Plaintiff further requests that the Court order the  
25 following briefing schedule:  
26  
27  
28

Plaintiff's motion for attorneys' fees and costs and for Class Representative service payment	16 days before the Final Approval Hearing
Plaintiff's motion for final approval of the settlement and for Class Representative service payment	16 days before the Final Approval Hearing
Defendant's Counsel shall file with the Court a declaration attesting that CAFA Notice has properly been served pursuant to 28 U.S.C. §1715	14 days before the Final Approval hearing
Reply briefs, if any	14 days before the Final Approval Hearing

## VIII. CONCLUSION

For the foregoing reasons, the court should grant preliminary approval of the joint stipulation of settlement, approved the proposed notice to class members, and set a final approval hearing.

Date: May 1, 2020

Matern Law Group. PC

/s/ Matthew J. Matern

Matthew J. Matern

Scott A. Brooks

Attorneys for plaintiff Delina Phipps